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International War Crimes Tribunal for the Former Yugoslavia

by Lois Tuttle and Ayesha Qayyum

The mortar attack on a Sarajevo marketplace on February 5 of this year shocked the international community. 68 people were killed while more than 200 were wounded. Although an estimated 200,000 people have been killed during the conflict in Bosnia-Herzegovina, televised footage of the marketplace victims mobilized unprecedented international attention and concern, leading the North Atlantic Treaty Organization (NATO) to issue a ten-day ultimatum requiring armed forces in and surrounding Sarajevo to withdraw their weapons or surrender them to United Nations (UN) forces. Failure to comply, NATO warned, would lead to air attacks on violators. Having secured compliance with this ultimatum, NATO and UN member states continue to debate further measures for ending the conflict.

One decision already taken is to bring to justice those responsible for serious violations of humanitarian law during the conflict. On May 25, 1993, the UN Security Council created the International Tribunal (IT) to try war crimes committed during the conflict in the former Yugoslavia. The IT was established under Chapter Seven of the UN Charter to prosecute "persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia." Among the violations denoted for prosecution are "grave breaches" of the 1949 Geneva Conventions; transgressions of the "laws

or customs of war," "crimes against humanity," and genocide. These categories of crimes encompass acts such as mass murder, "ethnic cleansing," systematic rape, and attacks on nonmilitary centers, such as the Sarajevo marketplace. U.S. ambassador to the UN Madeleine Albright suggests that blocking humanitarian aid should also be investigated as a possible war crime.

To date, however, the IT has not held any trials and still occupies a ten-

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tative position on the UN agenda. The tribunal's budget of \$31.2 million is criticized as disproportionate to the size of the task with which it is charged, while numerous European countries are accused of being recalcitrant in their support of the tribunal's effort. Bosnian Muslim officials, for example, angered by Britain's apparent indifference to the Balkan conflict and the status of the IT, rebuffed Britain's choice for IT prosecutor. In response, Britain blocked the appointment of the Bosnian Muslims' choice, Cherif Bassiouni, to the post.

The reluctance of several European nations to participate in the IT's efforts reflects, in part, their concern that the threat of trials may dissuade the parties from reaching an accord. In addition, faced with the specter of prosecution confronting them, Serbian authorities will likely block access to the 98 known sites of mass killings and 393 identified concentrations camps. Some observers argue that the prosecution will fail for other reasons. Although the IT is prohibited from trying suspects in absentia, it has no means of compelling governments to deliver those charged with war crimes to trial. The IT will be forced to depend on nations' submitting suspects voluntarily, or under pressure from the UN.

WCL Professor Diane F. Orentlicher, who served on a team of experts advising Ambassador Albright on the Statute of the IT, agrees that the body faces formidable obstacles. Nonetheless, she believes "it is vitally important that the international community do all it can now to assure the Tribunal's success. If the Tribunal is judged a failure," she explains, "its establishment will have done far more harm to fundamental principles of international law than if criminal accountability had never been attempted."

In spite of the obstacles, it appears some structural progress has been made. Eleven tribunal judges were sworn in on November 17, 1993; later that month, the IT convened its first official meeting. In addition, in early February, an all-women team of international lawyers and health-care workers arrived in Croatia to begin depositing some 200 alleged rape victims. IT president Judge Antonio Cassese, of Italy, predicted that the tribunal itself could begin work as early as June or July of this year.

Until now, no tribunal has been created by a nonbelligerent to prosecute violations of the laws and customs of war. International tribunals for the prosecution of war crimes have heretofore been set up by victors to punish defeated states. If the IT is successful, it will be a historic first. 🌐

History

The laws and customs of war date back to the Greek Amphyctionic League, which prohibited the destruction of places of worship during wartime. During the Middle Ages, the Synod of Charroux mandated excommunication for those who attacked women, peasants, merchants, and the clergy in times of war. The concept of a just war emerged during the Renaissance, differentiating between combatants and civilians as well as identifying proportionality as a measure of military action.

More recently, international agreements established explicit standards of conduct for warring parties. The Hague Conventions of 1907, for example, instituted rules of war and underscored the principle that all kinds and degrees of violence not necessary for the defeat of an enemy should be prohibited. Moreover, in the aftermath of World War II, transgressions of humanitarian law crimes against humanity were codified in international instruments such as the Nuremberg Charter of 1945 and the Genocide Convention of 1948. 🌐